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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 SERGEY VLADIMIR AIZEN,  
15 Defendant.  
16

Case No.: 16cr1836-LAB-1 and  
17cv2330-LAB

**ORDER GRANTING LEAVE TO  
AMEND PETITION**

17 Petitioner Sergey Vladimir Aizen pled guilty to importation of cocaine  
18 pursuant to a plea agreement. He was sentenced to 46 months' imprisonment  
19 followed by three years' supervised release. He filed an untimely notice of appeal,  
20 which was dismissed. The order dismissing his appeal noted that he was not  
21 foreclosed from filing a motion under 28 U.S.C. § 2255 bringing ineffective  
22 assistance of counsel claims. He then filed a § 2255 motion bringing six ineffective  
23 assistance of counsel claims, without explaining the factual basis for any of them.

24 Aizen identified six claims or issues:

25 1. General ineffective assistance of counsel.

26 2. His counsel failed to object to information on which his sentence was  
27 based.

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2 3. His counsel failed to explain the risks and benefits of a plea offer.

3 4. His counsel failed to negotiate a plea bargain.

4 5. His counsel failed to review the presentence report prior to  
5 sentencing.

6 6. His counsel failed to protect his appellate rights.  
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8 The record shows that some of Aizen's claims are baseless. Aizen's attorney  
9 did negotiate a plea agreement, and Aizen signed it and initialed each page. (See  
10 Docket no. 17.) He certified that he had read it, and that his counsel had fully  
11 explained it to him. (See *id.* at 12:20–13:1.) The record also shows that Aizen  
12 understood the risks and benefits of pleading guilty pursuant to the plea  
13 agreement. (See Docket nos. 15, 19.)

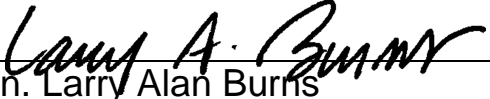
14 Most of the remaining claims are merely conclusory, and by themselves do  
15 not support any claim for relief. See *United States v. Johnson*, 988 F.2d 941, 945  
16 (9th Cir.1993). For example, Aizen has not alleged what information his attorney  
17 failed to object to, or what the grounds for any objections would have been.

18 To the extent Aizen has identified particular things his attorney failed to do,  
19 he has not shown that his counsel was incompetent for failing to do those things,  
20 or that he was prejudiced in any way by them. See *Strickland v. Washington*, 466  
21 U.S. 668, 687–88, 692 (1984) (holding that a defendant bringing an ineffective  
22 assistance of counsel claim must show that his counsel's performance fell below  
23 an objective standard of reasonableness, and that it prejudiced him). See also *Hill*  
24 *v. Lockhart*, 474 U.S. 52, 58 (1985) (applying *Strickland* test to guilty pleas based  
25 on alleged ineffective assistance of counsel). For example, he has not alleged  
26 facts showing that he had any meritorious basis for an appeal, that there was  
27 something in the presentence report his counsel should have seen and objected  
28 to, or that the sentence was based on any false or inaccurate information.

1 Aizen may, if he wishes, file an amended petition alleging additional facts in  
2 support of his claims, by **May 7, 2018**. His amended petition may omit claims, but  
3 it must not add any new claims. If he does not amend within the time permitted,  
4 the Court will rule on his unamended petition.

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6 **IT IS SO ORDERED.**

7 Dated: April 16, 2018

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10 Hon. Larry Alan Burnis  
11 United States District Judge  
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